

CITY ATTORNEY
MICHAEL J. AGUIRRE

REPORT TO THE
CITIZENS OF
SAN DIEGO

SAN DIEGO CITY COUNCIL
CHAMBERS
11 JANUARY 2008

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State of the City Attorney's Office
San Diego City Attorney¹
Michael J. Aguirre
San Diego City Council Chambers
11 January 2008

1. Reform

Thank you for allowing me to serve as your City Attorney during this time of change in San Diego City history. It is an honor and a privilege.

Four years ago I promised you that together we could reform the City Attorney's office, to protect the people of San Diego.

Tonight I can confidently report, my promise to you has been kept.

¹ For information about City Attorney's reports and work go to Sandiegocityattorney.org

For the first time in decades, the City Attorney is fearlessly protecting the people's interests.

Your sustained trust and support gave us the shield we needed to change the City Attorney's office.

You made it possible to recruit, mobilize and maintain a formidable team of City attorneys devoted to doing what's best for San Diego.

I listened to you, reflected, and took corrective action. From the fire and landslide I learned sometimes the City Attorney can help best by silence.

2. Do Not Quit Pension Case

We persevere in Court to set aside the unlawful pension fraud so that it does not become a permanent billion-dollar tax burden.

We return to court because justice has not yet been done, and, therefore, the court has not yet completed its proper function.²

Our case to set aside the illegal pension debt is pending in the appellate court.

The Cross case was won in the appellate court.

The \$100 million case with developer Roque de la Fuente was won in the appellate court.

And the pension case can be won in the appellate court.

Quitting would mean a billion-dollar tax burden on taxpayers. It would mean our people take money from their families to

² Lindberg, Tod The Political Teachings of Jesus p. 224.

pay benefits that were not paid for or earned.

The damage done to San Diego taxpayers by the pension fraud has drawn national attention.

Two weeks ago, the Wall Street Journal wrote: “The residents of San Diego know all too well how costly such frauds can be for taxpayers, and citizens who rely on city services.”

If one strategy fails we will try another, and another, and another until we find the one that works.

3. Higher Standards of Public Service
We conducted oversight investigations and issued 25 interim reports, alerting you to waste, fraud and abuse in your City government.

As a result, we know more about the facts and figures of our City government than ever before.

We are standing up to the self-seekers. We are halting “government by organized money.”³

The City Attorney’s authority has been interposed as a barrier between abusers of concentrated wealth and their City Hall allies.

We raised the standard of government service by using the City Attorney’s office to serve the public.

For we believe government “is competent [only] when all who compose it work as trustees for the whole people.”⁴

³ Phrase coined by President Roosevelt 1936.

⁴ Franklin Roosevelt Second Inaugural Address 20 January 1933.

San Diegans tell me every day they look forward to their City Attorney continuing to stand up for them, with an ever greater readiness to do what is best for San Diego.

4. Protecting Public in Court

In the civil courts your attorneys have battled for you in hundreds of cases. In three years, your lawyers saved San Diego taxpayers more than \$100 million.

In the criminal courts, our attorneys prosecute more than 30,000 cases each year – from gang activity to drunk driving to domestic violence to consumer fraud.

We protect your families and your neighborhoods by holding accountable those who commit crimes.

5. Role of City Attorney

Some want the City Attorney to play a limited role. They prefer a docile lawyer who merely carries out the wishes of City officials.

But the people organized the Office of City Attorney to protect the public.

The people decided an elected City Attorney would be independent and able to fearlessly protect San Diegans.

The people did not want other office holders to appoint the City Attorney.

They believed an appointed lawyer would be obliged to the officials making the appointment.

In 1931, by 80% of the vote, the people decided to elect their City Attorney.

Their positive vote was induced by these promises:

The city attorney is to be elected by the people. This is a guarantee that the legal head of the government will be able to fearlessly protect interests of all San Diego and not merely be an attorney appointed to carry out wishes of council or manager.⁵

The people decide who the lawyer is for the City. Not the Mayor, not the City Council.

Unfortunately, some past City Attorneys fell into the habit of acting as private lawyers for some office holders.

They did not consistently enforce our Charter or Municipal Code.

⁵ See Report on the Role of the City Attorney as Independent Representative of the People of San Diego.

These former City Attorneys looked the other way when their City Hall “clients” violated federal and state laws.

City Attorneys did not restrain City officers from self-dealing. City finances are in shambles because of it. The result to taxpayers -the City is unable to pay for basic needs.

When I took my oath of office on December 6th 2004 the City Attorney’s office adopted an ethical declaration of independence from these bad practices.

We stopped the perversity of the City Attorney acting as the protector of City Hall wrongdoers.

We did not accept deficient answers or superficial solutions. Nothing is more “dangerous than sincere ignorance.”⁶

⁶ Dr. Martin Luther King Jr.

We did not fear the truth, we welcomed it. Telling San Diegans the truth does not create City liabilities. City liabilities are caused by City officials who breach their legal duties.

6. Always Right to Do Right

Our lawyers believe it is always right to do right.⁷

When some City leaders proclaimed we had adopted a budget and plan for “fixing most of the major financial issues,” we exposed it as pretense.⁸

These leaders use political advisers, practiced in the art of political deception to change “the optics” of our financial and legal problems.

⁷

Dr. Martin Luther King Jr.

⁸

See San Diego City Attorney’s 24th Interim Report.

Their job is to make it look like the problems are being solved. To make them disappear by political hocus pocus.

7. Pension Questions

Your City Attorneys have diligently worked to understand and resolve our complex pension problem.

From our study we have many questions needing answers:

1. Why were 8,200 years of service given away, costing taxpayers \$146 million?
2. Why were pension benefits given to union officials in violation of IRS laws?
3. Why is DROP costing more than \$200 million if the law requires it to be cost-neutral?⁹

⁹ San Diego Municipal Code § 24.1401(b) reads: “DROP is intended to be cost neutral.”

4. Why were the yearly formulas of retired elected officials increased retroactively?
5. If the Mayor, City Council, and City Attorney can serve only two 4-year terms why were some permitted to buy 5 more years of service? ¹⁰

Wall Street is not buying the fairy tale that San Diego's billion-dollar pension debt is under control.

In fact, just last month, the Wall Street Journal warned, the City may have to pay a "moral hazard" fee to sell bonds, because City Hall insiders did not tell the truth.

The first city mentioned in the Wall Street Journal's column on government fraud was San Diego.

¹⁰ For example, see Charter § 12(f).

Listen to how City Hall wrongdoers diminished the integrity and tarnished the reputation of San Diego:

An ongoing SEC investigation resulted in new fraud charges this month against San Diego's independent auditor. The SEC had already found that the city issued false and misleading financial statements in no fewer than five separate bond offerings in 2002 and 2003.

The city didn't tell investors that its unfunded pension liabilities were about to balloon to \$2 billion by 2009, or about that little matter of another billion for retiree health care.

Said SEC Chairman Christopher Cox in July, "Investors had no way of knowing that the city knowingly under-funded its pension obligations so that it could increase pension benefits, while deferring the costs."

Such facts can only intensify the discontent of San Diego taxpayers.

This is the context in which your City Attorney is working to keep materially false statements out of the City's financial disclosure documents.

8. Elected City Auditor

One way for San Diego to restore our good name is to establish the office of an elected City Auditor.

The breakdown of our financial controls, City audits delayed for years, millions of dollars wasted on consultants, our appointed auditor's lack of independence, also prove we must have an elected City Auditor.

An elected city auditor will be accountable to voters for financial controls, just as the City Attorney is answerable to them for legal controls.

9. Subpoena Power

Other harsh realities show why the City Attorney's office must be given the authority to subpoena evidence of wrongdoing.

This past year we saw a search warrant duly issued by a court of law not served.

We saw evidence of unlawful conduct withheld. We saw pension officials refusing to answer important questions about the public's business.

With subpoena authority our City Attorney will be able to complete needed investigations.

10. Lavish Pensions, Limited Budgets

City Hall insiders paid themselves million-dollar pensions, as shown by several of our Interim Reports.

In so doing, these trusted government officials violated laws requiring their absolute loyalty to our City and its taxpayers.

They knowingly tampered with the City's financial system. They underfunded the City's pension obligations to increase their pension benefits, while deferring the costs to taxpayers for 20 years.

Taxpayers and pensioners, at the bottom of the pension pyramid, are forced to pay for those on top.

The despotic pension scheme has been wrapped in the robes of legal sanction.

- Laws against self-dealing by public officials have been brushed aside.

- Laws protecting later generations from taxation by earlier ones have been disregarded.
- Laws requiring same-year pension debt be paid from same-year revenues are not enforced.

The failure to enforce the law leaves five unearned and unpaid pension programs in place, pushing pension costs to \$6.5 billion.

Taxpayers face two pension obligations, a past debt of \$1.2 billion and a future debt of \$1.3 billion.

Since the year 2000, \$1.2 billion has been taken from our general fund for these pensions.

More money for pensions means no money for our essential needs.

The drain on City funds to pay pension costs has meant decay for our infrastructure and grief for our people.

No money was left:

- To pay for repairs needed on our streets and roads.
- To pay for the brush management needed to prevent wild fires.
- To pay for the reinforcement needed on Mt. Soledad to stop earth slides.

We see the interdependence between lavish pensions and limited budgets.

We see thousands of San Diegans who were not protected from fire, not protected from land slides, and not protected from unsafe roads because

their tax dollars were misspent on a pension system rigged to benefit insiders.

No matter how long it may take us we will overcome this premeditated misuse of public funds.

11. Progress on Pension Problem

We do see progress. Last month the IRS ended two of the unlawful benefits.

We have asked the Council to reduce the costs of two other benefits, saving taxpayers over \$300 million.

And we are vigorously pursuing the City's court case to end hundreds of millions of dollars of additional unlawful benefits.

The City Attorney has repeatedly asked the parties to compromise our

differences by settlement. I renew that offer tonight.

Those who claim our setbacks belong to the City Attorney do not understand.

Our defeat in court would mean San Diegans continue to shoulder a billion-dollar tax burden for 20 years.

Our defeat would mean greed won.

12. Pension Politics

Pension perplexity has put some City leaders in agony. They waver between tough talk and no action.

Now they are putting us through another bewildering cycle of promising to pay off the pension debt, but not until some distant tomorrow.

They leave to future Mayors and City Councils the burden of making massive contributions to the pension fund.

Their proposal is timed to work after the proponents leave office. This is not a solution it's a "cop-out."

They offer the pathetic excuse that "this is the hand that we've been dealt."

Well, in the words of President Franklin Roosevelt, the people of San Diego need a new deal.

We need a Mayor and City Council to work with the City Attorney to rid taxpayers of the unlawful pension debt.

Time is running out for those still in office who caused or contributed to the problem, to take corrective action.

13. Water Crisis

We have another legal mandate we must address. Our City is obligated under state law to certify a 20-year water source exists, before approving new, large housing projects.

Almost 90% of our water is pumped from water sheds hundreds of miles from San Diego. Demand for this imported water is up, supply down.

Without water reclamation, increased storage capacity, desalination, and conservation, we cannot honestly certify a 20-year source of water exists for large, new housing projects.

14. United Purpose

Our office is organized around one crystal-clear value: San Diego City government should provide the greatest

good for the greatest number of our people.

The City Attorney's office strives to be a beacon of hope and a part of the community of good will in San Diego.

To our critics we say, better the occasional faults of a City Attorney trying to serve the people, than the consistent misuse of the office by those serving private, selfish interests.

Let us resolve our financial and legal crisis; strengthen the City Attorney's ability to serve; and establish the rule of law in San Diego.

Let us join together to keep the City Attorney's office an instrument of our united purpose.

Let us join together to maintain the City Attorney's office as a catalyst for reform and change in our City.

"Let us move forward with strong and active faith."¹¹

¹¹ President Franklin Roosevelt's undelivered Jefferson Day speech 13 April 1945.